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09/740,515	12/18/2000	Karol P. Krotki	032660-019	5151

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EXAMINER

VAN DOREN, BETH

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/740,515

**Applicant(s)**

KROTKI, KAROL P.

**Examiner**

Beth Van Doren

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following is a Non-Final Office action in response to communications filed 09/09/05. Claims 1-4 and 9-10 are amended. Claims 1-4 and 7-10 are pending in this application.

#### ***Response to Amendment***

2. Applicant's amendments to claim 1 is sufficient to overcome the 35 USC § 101 rejections of claims 1-4 and 7-10 set forth in the previous office action.
3. Applicant's amendments to claims 1, 3, 4, 9, and 10 are sufficient to overcome the 35 USC § 112, second paragraph, rejections set forth in the previous office action. However, new 35 USC § 112, second paragraph, rejections have been set forth below.

#### ***Claim Objections***

4. Claim 4 is objected to because of the following informalities: sentence structure. Claim 4 recites "wherein the of the additional group members are modified", which should more appropriately be --wherein the additional group members are modified--. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 4 is rejected because it is not specifically clear as to what the applicant is claiming in the limitation "wherein the additional group members are modified". By reciting the

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“members are modified”, the limitation is claiming the modification of people. It is unclear as to how or why the claimed method would modify people. Therefore, for examination purposes, the limitation has been construed as --wherein selection probabilities are modified--. Clarification is required.

7. Claim 4 further recites the limitations "members of these additional groups are selected for the survey" and “the additional groups members are modified”. There is insufficient antecedent basis for the terms “these additional groups” and “the additional group members” in the claim. For examination purposes, examiner has construed the limitation "members of these additional groups are selected for the survey" as --members of these multiple groups are selected for the survey--. As for the limitation “the additional group members are modified”, this limitation has been addressed above and has been construed as --wherein selection probabilities are modified--. Correction is required.

8. Claim 10 recites the limitation "the weighting factors". There is insufficient antecedent basis for this limitation in the claim. Claim 9 recites only a single weighting factor. Therefore, for examination purposes, examiner has construed that claim 10 includes additional weighting factors in addition to the weighting factor of claim 10. Clarification is required.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decision Analyst, Inc. ([www.decisionanalyst.com](http://www.decisionanalyst.com)) in view of Probability Definitions ([stat.evu.edu/SRS/modules/ProbDef/urn.html](http://stat.evu.edu/SRS/modules/ProbDef/urn.html)).

10. As per claim 1, Decision Analyst, Inc. teaches a computer-implemented method comprising:

identifying a group within an available survey panel, the group having predetermined characteristics (See page 3, section 1, page 5, section 1, page 8, section 1, and page 14, section 1, wherein a group having predetermined characteristics are identified);

selecting a first set of members from the group for a first survey (See page 3, section 1, page 7, section 1, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the members are selected);

temporarily removing the selected first set of members from the available survey panel (See at least page 7, sections 1-2, wherein the first members are removed and blocked from similar surveys for a minimum of six months); and

selecting, with processor, additional members from the available survey panel for a second survey while compensating for the removal of the first set of members from the available survey panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein additional members are drawn to complete surveys in the same product category, this drawing occurring with the first group removed from eligibility, thus making the chance of selection is higher for the available members).

However, while Decision Analyst, Inc. discloses choosing survey panel members by product without replacing the members to the pool (i.e. sampling without replacement), Decision

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Analyst, Inc. does not expressly disclose selection probabilities that compensate for the removal of these members.

Probability Definitions discloses that when sampling without replacement, selection probabilities change to compensate for removal of a member of a population (See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal).

Decision Analyst, Inc. discloses sampling to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probabilities of remaining members are updated for the removal of members. Probability Definitions discloses this sampling without replacements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the survey panel members of Decision Analyst, Inc. by compensating selection probabilities for the removal of members of the population in order to increase the quality of the survey data by limiting the number of surveys given to member, thus keeping panel members “fresh” and “healthy” by not spamming the members with surveys. See page 7, sections 1-3, which discusses the rationale for removing respondents from a pool.

11. As per claim 2, Decision Analyst, Inc. teaches choosing survey panel members by product without replacing the members to the pool (i.e. sampling without replacement) and then, after removal, selecting additional members (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein additional members are drawn to complete surveys in the same product category, this drawing occurring with the first group removed from eligibility, thus making the chance of selection is higher for the available members). However, Decision

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Analyst, Inc. does not expressly disclose and Probability Definitions discloses selecting the additional members by increasing the selection probabilities of remaining members in the group (See page 1, section 1-2, wherein in sampling with Replacement the probabilities of the remaining members increase, such as the probability going from 6/10 to 5/9).

Decision Analyst, Inc. discloses sampling to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probabilities of remaining members are updated for the removal of members. Probability Definitions discloses this sampling without replacements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the survey panel members of Decision Analyst, Inc. by compensating selection probabilities for the removal of members of the population in order to increase the quality of the survey data by limiting the number of surveys given to member, thus keeping panel members “fresh” and “healthy” by not spamming the members with surveys. See page 7, sections 1-3, which discusses the rationale for removing respondents from a pool.

12. As per claim 3, Decision Analyst, Inc. teaches wherein weights of the additional members are modified to compensate for the group members removed from the panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the first group selected is removed from eligibility, thus giving the remaining members a higher weighting factor of being selected since the number in the pool is decreased). However, Decision Analyst, Inc. does not expressly disclose using a weight factor proportionate to the

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number of original members in the group over the number of remaining members in the group in the available panel.

Probability Definitions teach sampling without replacement and changing selection probabilities to compensate for removal of a member of a population (See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal).

Decision Analyst, Inc. discloses sampling a survey panel to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probability of selection is adjusted to compensate for the removal of the members, as shown by Probability Definitions. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a weight factor that reflects the sampling without replacement in order to increase the motivation of the panel members by not overusing said members. See at least page 7.

13. As per claim 4, Decision Analyst, Inc. teaches wherein multiple groups are identified within the available survey panel, members of these multiple groups are selected for the survey and removed from the available survey panel, and wherein selection probabilities are modified to compensate for the removal of the members of the group from the available survey panel (See page 3, section 1, page 5, page 7, section, page 8, section 1, and page 14, section 1, wherein multiple groups exist within the available panel and once a member takes a survey within a specific product category, the member is removed from the pool. The subsequent chance of the additional members of being selected is compensated and these members have a higher probability of selection).



However, Decision Analyst, Inc. does not expressly disclose modifying selection probabilities to compensate for the removal of members.

Probability Definitions discloses that when sampling without replacement, selection probabilities change to compensate for removal of a member of a population (See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal).

Decision Analyst, Inc. discloses sampling to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probabilities of remaining members are updated for the removal of members. Probability Definitions discloses this sampling without replacements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the survey panel members of Decision Analyst, Inc. by compensating selection probabilities for the removal of members of the population in order to increase the quality of the survey data by limiting the number of surveys given to member, thus keeping panel members “fresh” and “healthy” by not spamming the members with surveys. See page 7, sections 1-3, which discusses the rationale for removing respondents from a pool.

14. As pre claim 7, Decision Analyst, Inc. teaches wherein an interval selection method is used (See page 7, sections 1-2, page 8, section 1, and page 14, section 1, wherein the group is selected based on intervals).

15. As per claim 8, Decision Analyst, Inc. teaches wherein a weighted interval selection method is used (See page 7, sections 1-2, page 8, section 1, and page 14, section 1, wherein the

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group is selected based on intervals, with members already selected removed from the group, thus making the chance of selection is higher for the available members).

16. As per claim 9, Decision Analyst, Inc. teaches wherein a weighting factor is used to compensate for the removal of people who have been previously given a survey within a certain time period (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the first group selected is removed from eligibility, thus giving the remaining members a higher chance or weighting factor of being selected since the number in the pool is decreased).

17. As per claim 10, Decision Analyst, Inc. teaches weighting factors used and including an original weighting factor to match the panel members to the demographics of the general population and a removal weighting factor to compensate for all of the members of the panel removed from the panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the groups are originally chosen based on a factor, and then when the first group selected, this group is removed from eligibility, thus giving the remaining members a higher weight of being selected since the number in the pool is decreased). However, Decision Analyst, Inc. does not expressly disclose a selection weighting factor to deal with a non-proportionate selection.

Probability Definitions discloses that when sampling without replacement, selection probabilities change to compensate for removal of a member of a population (See page 1, section 1-2, wherein selection factors change to compensate for the group being non-proportional to the original group).

Decision Analyst, Inc. discloses sampling a survey panel to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six

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month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the selection-weighting factors of the members remaining in the population are adjusted to increase the probability of selection, as disclosed by Decision Analyst, Inc. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include selection weighting factors in order to more properly manage the selection of appropriate panel members by ensuring only eligible members are chosen. See pages 7 and 14.

### ***Response to Arguments***

18. Applicant's arguments with regards to Decision Analyst, Inc. ([www.decisionanalyst.com](http://www.decisionanalyst.com)) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (1) Decision Analyst, Inc. does not qualify as prior art as webarchive.org has not been tested and validated as being able to determine the publication date of an Internet Web Page, (2) Decision Analyst, Inc. does not teach or suggest selection probabilities or selecting additional members from the panel for a second survey using selection probabilities to compensate for the removal of the first set of members from the panel, (3) Decision Analyst, Inc. does not teach or suggest multiple groups being identified within the available survey panel, members of these additional groups are selected for the survey and removed from the available survey panel, and wherein the additional group members are modified to compensate for the removal of the members of the group from the available survey panel, (4) Decision Analyst, Inc. does not teach or suggest modifying the weights of remaining members of the panel to compensate for the group members removed from the panel. Further (5) Applicant requests that Examiner cite a reference supporting the assertion that sampling without replacement is well-known.

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Applicant's arguments (2) and (3) have been fully considered and are persuasive. Therefore, the 35 USC § 102(a) rejections over Decision Analyst, Inc. have been withdrawn. However, upon further consideration, new grounds of rejection has been asserted above.

Applicant's argument (5) has been considered but is moot in view of the new grounds of rejection set forth above, as necessitated by amendment.

In response to argument (1), Examiner reminds the applicant that information on internet web pages are electronic "printed publications", available publicly, and thus valid art. The WayBack Machine (archive.org) retrieves archived web documents, wherein the retrieved document's URL contains the date of the page specified in the format YYYYMMDDhhmmss (See Appendix for Information about the WayBack Machine from archive.org). Looking at Decision Analyst, Inc., the bottoms of the pages contain such URLs, with the latest date being 06/21/2000, as shown in the URL <http://web.archive.org/web/2000062190039/www.decisionanalyst.com/online/acop.com>. See pages 2-3 and 47-48 of the attached appendix that discuss how the date features work as well as WayBack Machine's archiving capabilities. Examiner has therefore established a prima facie case that Decision Analyst, Inc. is valid prior art. Therefore, the burden is now on the Applicant to prove that this is not the case.

In response to argument (4), Examiner respectfully disagrees. Examiner points out that while applicant has argued claim 14, claim 14 is not currently pending. Further, examiner points out that claims 7-10 do not recite the limitation "modifying the weights of remaining members of the panel to compensate for the group members removed from the panel". Claim 7 contains no mention of the term "weight". Claim 8 recites "a weighted interval", but does not discuss

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modifying weights of remaining members. Claims 9 and 10 recites weighting factors and a weighting factor that is used to compensate for the removal of people. However, the language “modifying the weights of remaining members of the panel to compensate for the group members removed from the panel” is not present. Therefore, in response to this argument, it is noted that the features upon which applicant relies are not recited in the rejected claims, as discussed above. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chaudhuri et al. (U.S. 6,532,458) discloses using a database system to perform sampling without replacement.

Chaudhuri et al. (U.S. 6,542,886) teaches using a database system to perform sampling without replacement.

Yaffee (“SUDAAN 7: Statistical Analysis Software for Complex Sample Designs”) discloses using sampling without replacement to perform surveys and also using stratification to focus on a target population.

Fiorelli (“The Organization Health Report”) discloses surveying employees and sampling without replacement to yield a representative sample that is not over surveyed.

Snee (“Listening to the Voice of the Employee”) teaches employee surveys and sampling without replacement to produce good results.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*bvd*  
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November 18, 2005

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